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In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 304

JOHANN CARL PFLUEGER, PETITIONER

v.

THE UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The memorandum opinion of the district court dismissing the complaint for lack of jurisdiction (R. 240) is not reported. The opinion of the United States Court of Appeals for the District of Columbia (R. 248–254) is not yet reported.

JURISDICTION

The judgment of the United States Court of Appeals for the District of Columbia was entered April 7, 1941 (R. 254). Petition for rehearing

was denied on May 29, 1941 (R. 255). The petition for a writ of certiorari was filed July 24, 1941. The jurisdiction of this Court is invoked under the provisions of Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether under the Fifth Amendment and the Trading with the Enemy Act, a federal district court has jurisdiction of an action to recover an amount in excess of the net proceeds of the sale of property seized under the Trading with the Enemy Act.

STATUTE INVOLVED

The applicable portions of the Trading with the Enemy Act are set forth in the Appendix, pp. 9–12.

STATEMENT

Petitioner, an American citizen, resided in Germany during the war. The Alien Property Custodian seized his American property, consisting of certain shares in two corporations, in January 1918 (R. 2–4), because, as a person resident in Germany, Pflueger was an enemy as defined by Section 2 (a) of the Trading with the Enemy Act. Under the direction of the Custodian, the stocks of petitioner which had been seized were sold (R. 4–5). The proceeds of the securities in the sum of $506,169 were returned to petitioner between

1920 and 1922 (R. 6). Petitioner contends that the full and true value of the stocks in January 1918, the date of the seizure, was $1,579,410 (R. 4).

Petitioner's complaint was filed in the United States District Court for the District of Columbia on November 1, 1937 (R. 1–12), against the United States, the then Attorney General as Alien Property Custodian, and the Treasurer of the United States "for the Recovery of Just Compensation under the Fifth Amendment and Section 9–a of the Trading with the Enemy Act" (R. 1), on the theory that the seizure and sale of petitioner's property by the Custodian constituted a taking of private property for public use, for which the United States is obligated to pay just compensation, and that petitioner was entitled to recover the true value of the stock at the date of its seizure, together with interest thereon. The respondents moved to dismiss the complaint on jurisdictional grounds and contemporaneously moved for summary judgment on the ground, *inter alia,* that the petitioner was an "enemy" as defined by the Trading with the Enemy Act and was not entitled to more than the proceeds of his property (R. 29). The trial court dismissed the suit for lack of jurisdiction on the ground that the Trading with the Enemy Act does not authorize any recovery in excess of the net proceeds of the property seized and sold, and that there was no jurisdiction under the Tucker Act, since the claim

exceeded $10,000 (R. 240–241). The court did not pass upon the motion for summary judgment. The Court of Appeals affirmed on the same ground (R. 248–254). A petition for rehearing was denied (R. 255).

ARGUMENT

The action is one against the United States (*Cummings* v. *Deutsche Bank*, 300 U. S. 115, 118), and may not be maintained without the consent of Congress. Petitioner does not and cannot maintain that such consent may be found in the Tucker Act, since the complaint was filed more than six years after the cause of action, if any, arose, and the claim is for an amount in excess of $10,000. Judicial Code, Sec. 24 (20); *Franklin* v. *United States*, 308 U. S. 516. Section 7 (c) of the Trading with the Enemy Act, the only other statute on which the jurisdiction of the district court may be rested, precludes recovery under Section 9 (a) in excess of the "net proceeds" of the sale of the seized property, and this sum has already been paid to petitioner. Petitioner contends, however, that Section 7 (c) does not and cannot validly limit recovery to an amount less than "just compensation." The decision of the court below rejecting this contention is correct and presents no question calling for view by this Court.

1. Section 7 (c) of the Act expressly provides that the sole relief and remedy of any person having any claim to property seized by the Alien

Property Custodian shall be that provided by the terms of the Act, and that in the event of sale or other disposition of such property by the Alien Property Custodian, recovery shall be limited to and enforced against the "net proceeds" received therefrom and held by the Alien Property Custodian or by the Treasurer of the United States. An action for an amount in excess of the "net proceeds" is outside the statutory jurisdiction of the district courts. This limitation is valid even though the "net proceeds" are less than the full value of the seized property. The sovereign's immunity from unconsented suit exists "whatever * * * the source of the right sought to be enforced," whether it be an act of Congress or a provision of the Constitution. *Lynch* v. *United States,* 292 U. S. 571, 581–582.

The decision below is not in conflict with *Becker Steel Co.* v. *Cummings,* 296 U. S. 74. In that case, the Court merely held that, as a matter of statutory construction, the words "net proceeds * * * held" by the Custodian should be interpreted to include the proceeds held by him at any time and not lawfully disbursed. The opinion, it is true, suggests that a narrow construction would raise constitutional doubts, but the Court expressly observed that its conclusion "does no violence to the language of the act" (*id.* at 81). It is clear that the recovery here sought, an amount far greater than the gross proceeds, is in excess

of the "net proceeds," however liberally that term may be construed.

Nor is the decision below in conflict with that of the Court of Claims in *Escher* v. *United States,* 68 C. Cls. 473, certiorari denied, 281 U. S. 752. In that case a suit was brought in the Court of Claims after a claimant had received a return of the net proceeds of his property in a suit in the district court under the Trading with the Enemy Act. The Court of Claims held that the judgment in the action in the district court was *res judicata.* As an alternative ground of decision, the court also held that, by Sections 9 and 7 (c), Congress had vested exclusive jurisdiction of claims growing out of war seizures in the district courts. The court did not consider whether recovery in excess of "net proceeds" could be had under the Trading with the Enemy Act, and the question whether an action could be maintained in the Court of Claims under the Tucker Act is not here involved.

2. Even if the district court had jurisdiction, the petitioner was not entitled to any recovery on the facts adduced in support of respondents' motion for summary judgment.[1] The evidence

[1] Petitioner contended below that the Court of Appeals lacked jurisdiction to pass upon the question of enemy status with its attendant infirmities because the respondents had failed to take a cross appeal from the judgment of the district court, dismissing the complaint on the ground of lack of jurisdiction only. The court below found it unnecessary to pass upon this question. However, it would appear that any matter set up in the motion for summary judgment and

conslusively shows that Pflueger was born in the Kingdom of Hawaii in 1861; that at the age of six he was taken to Germany to be educated and, except for two years' residence in Hawaii between 1884 and 1886, he lived in Germany until 1920; and that during the World War he was engaged in business in Bremen (R. 25–29, 58–60, 249). Section 2 (a) of the Trading with the Enemy Act (*infra,* p. 9) defines an enemy as an individual resident within the territory (including that occupied by the military or naval forces) of any nation with which the United States is at war, or resident outside of the United States and doing business within such territory. Since petitioner not only resided in and carried on business in Germany during the war, but had been domiciled there practically all of his life, he was indubitably an enemy. *The Venus,* 8 Cranch 253, 282–284; *Mrs. Alexander's Cotton,* 2 Wall. 404. The decisions of this Court establish that the property of an enemy, irrespective of his nationality, may be confiscated during times of war and that return of the property or payment of compensation therefor is a matter of grace. *Juragua Iron Co.*

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included in the record which would support the decision below may be urged. *United States* v. *American Ry. Express Co.*, 265 U. S. 425, 435; *Morley Co.* v. *Maryland Casualty Co.*, 300 U. S. 185, 190–191. The fact that a trial court limits its judgment to jurisdictional grounds does not preclude an appellate court from affirming on another ground, even when no cross-appeal has been taken. *Langnes* v. *Green*, 282 U. S. 531, 538–539.

v. *United States,* 212 U. S. 297, 305–306; *Herrera* v. *United States,* 222 U. S. 558, 559; *Cummings* v. *Deutsche Bank,* 300 U. S. 115, 120.

CONCLUSION

The case was correctly decided by the court below. There is no conflict of decisions. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

CHARLES FAHY,
Acting Solicitor General.
FRANCIS M. SHEA,
Assistant Attorney General.
PAUL A. SWEENEY,
HARRY LEROY JONES,
FREDERICK L. SMITH,
Attorneys.

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